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The case of The Badger Lumber Co. v. The Marion Water Supply Electric Light & Power Co., recently decided by the Supreme Court of Kansas, furnishes a theme, within modern lines, for a useful note by the learned chief justice of that court, in the current number of the *Michigan Law Journal*. The subject is electrical law, which, though young, has already assumed formidable proportions. The case decides two things: First, that the poles, wires and lamps of an electric light plant, beginning at the power house and extending throughout the city, are appurtenances to the power house within the mechanic's lien law of Kansas; second, that an electric light company which has a franchise to occupy the streets of a city with its poles, wires and lamps, and is engaged in furnishing light to the people of the city, is not so distinctively public in its nature and operations as to exempt its property from the application of the mechanic's lien statute. The main question was decided upon the common law doctrine that that is "appurtenant" which is reasonably necessary to the enjoyment of the thing itself. Undoubtedly, the principal thing here was the power house, and the poles and wires attached thereto were an incident to the power house and machinery. They were necessary to the enjoyment of the principal thing, and indispensable in the transmission of electricity and the lighting of the city. If a conveyance of the property of the company with the appurtenances belonging, had been made by the defendants, there is no doubt that the poles and wires would have passed as appurtenant to the premises conveyed, and the fact that the poles were planted in the streets of the city, the fee of which is in the public, did not in the view of the court, change their character or make them any the less an appurtenance to the premises of the electric light company. The court relies upon Redlow v. Barker, 4 Kan. 445, where a hotel sign attached to a post planted in the streets of a city was held an appurtenance to the hotel, and Beatty v. Barker, 141 Mass. 523, where a mechanic's lien was enforced for a drain pipe from the cellar of a house through the cellar wall, front yard and out into the street to a connection with the sewer.

Chief Justice Horton, in the note referred to, calls attention to two Missouri cases on the subject, which seem to be in conflict—Kershaw v. Fitzpatrick, 3 Mo. App. 575, and Pullis v. Hoffman, 28 Mo. App. 666. In the former it was held that a mechanic's lien does not attach for the laying of a lead pipe two hundred and fifty feet in length under a public street for the purpose of connecting a bath-room in the building with a water-main in the city. In the other case, it was decided that the statute gave a lien for the illuminating tile which went into the front door, in the rear of the front sill, and also extended from the south line of the building about four feet into the sidewalk. The chief justice does not think that the Kershaw case was well decided. The following authorities sustain the reasoning and conclusion of the court upon the main question: Gerard v. Birch, 28 N. J. Eq. 317; Derrickson v. Edwards, 29 N. J. Law, 468; Philbrick v. Ewing, 97 Mass. 134; Factory v. Batchelder, 3 N. H. 190; Carpenter v. Leonard, 5 Minn. 155; Milling Co. v. Remick, 1 Oreg. 169.

Upon the other point in the case, namely, whether the property of an electric light company, having a franchise from the city to occupy its streets in the transmission of light to the inhabitants of the city, is subject to a mechanic's lien, attention is called to the fact that, in some of the States, notably Pennsylvania, it has been held, under their statutes, that a mechanic's lien will not attach to the property of *quasi* public corporations. (See Foster v. Fowler, 60 Pa. St. 27; Susquehanna Coal Co. v. Bonham, 3 W. & S. 27.) In a recent case in Pennsylvania—Guest v. Water Company, 21 Atl. Rep. 1001—the court held the property of the water company exempt from mechanic's liens. In Graham v. Mt. Sterling Coal Co., the Kentucky Supreme Court held that the mechanic's lien law does not apply to and cannot be enforced against bridges, culverts, trestle-work, etc., of a railroad company, and substantially the same thing was decided by the Supreme Court

of Missouri in Dunn v. North Mo. R. R. Co., 24 Mo. 493.

Whatever may be the grounds arising out of public policy, for applying to railroad companies the general rule that the public property of a municipal corporation is not subject to seizure and sale, we agree with the Kansas court that there is no public policy or necessity which requires the exemption of the property of an electric light company from liability to the ordinary process of law or to a mechanic's lien.

NOTES OF RECENT DECISIONS.

CONSTITUTIONAL LAW—FEE FOR FILING ARTICLES OF INCORPORATION.—The case of Ashley v. Ryan, decided by the Supreme Court of Ohio, presents an interesting and somewhat novel question of constitutional law. The action was against the secretary of State to restrain him from paying into the treasury of the State certain moneys paid him as a fee for filing in his office "articles of agreement of consolidation" of certain railway companies which the plaintiffs claimed had been wrongfully exacted of them and having been paid under protest, they asked a return of the money. They based their right to relief upon the invalidity of the law under which the money paid by them was exacted. The holding of the court was in effect that section 148*a* Rev. Stat. as amended Feb. 1889, requiring the payment of a fee to the secretary of State for the filing of articles of agreement of incorporation and also of consolidation proportioned to the authorized capital stock of the company is a valid law and applies to articles of agreement of incorporation between an Ohio company and a company or companies of another State, as well as to articles of consolidation between Ohio companies only. Minshall, J., says:

The statute was passed February 12, 1889, and is an amendment of section 148*a*, Rev. St., fixing the fees which the secretary of the State is required to charge for "official services." It is divided into various paragraphs. The first fixes the fee for filing articles of incorporation of any corporation whose capital stock is over $10,000, at one tenth of 1 per cent. upon the authorized capital of the company. The third paragraph reads as follows: "For filing articles of agreements of consolidation of corporations having a capital stock, the following fees shall be collected by the secretary of State: Said articles of agreements of consolidation shall be treated as the articles of incorporation of the new consolidated corporations created by such articles or agreements of consolidation, and the fees for filing such articles or agreements of consolidation shall be the same in each case as is hereinbefore set forth for the filing of articles of incorporation of a corporation having the same amount of capital stock, as is provided for by the articles or agreements of consolidation for the new consolidated corporation created by any such articles or agreement of consolidation; and, in fixing the amount of such fees, no credit shall be allowed for fees previously paid by any of the constituent corporations, parties to such consolidation, but the same shall be determined solely by the amount of capital stock of the new corporation created by such articles or agreements of consolidation." The fees are required to be paid into the State treasury, and the secretary is prohibited from filing or recording such articles until the fees have been paid.

The first objection to the statute is that it imposes a tax not authorized by the constitution of the State; and the second is that, as to the plaintiffs, it imposes a burden upon interstate commerce, and is therefore in violation of the constitution and laws of the United States.

In support of the first objection, the second and fifth sections of the twelfth article of the constitution are cited. We think it well settled that the second section simply relates to the taxation of property; and, unless it can be shown that the sum exacted of the plaintiffs is such a tax, it has no application to the case. Much stress is placed upon language to be found in the opinions delivered in Bank v. Hines, 3 Ohio St. 1. The question there, however, was not as to whether the tax complained of was a tax on property, but whether the bank was entitled to deduct its debts from its moneys and credits. The decision of that question in no way involved the question as to the limit of the power of taxation conferred on the general assembly by the general grant of legislative power. This question arose and was fully considered in the subsequent case of Baker v. City of Cincinnati, 11 Ohio St. 544. It was there held that the provision of the constitution requiring all property to be taxed by a uniform rule was simply a limitation on that mode of taxation, and does not necessarily exclude taxation upon that which is not property, nor cover the whole ground within the limits of the taxing power; and that "if there be a species of taxation, or a subject-matter of taxation, not embraced in that section, there is nothing in it by which they are prohibited or excluded." The learned judge, delivering the opinion, then proceeded to show that the taxing power is embraced in the general grant of legislative power, and is as ample, except where restraint by express provisions, as the object and purposes of the State government. The doctrine of this case has never been questioned as a sound exposition of the constitution on the subject of taxation, and has since been followed in numerous cases. Cincinnati Gas-Light Co. v. State, 18 Ohio St. 242; Telegraph Co. v. Mayer, 28 Ohio St. 523; Adler v. Whitbeck, 44 Ohio St. 565, 9 N. E. Rep. 672; Anderson v. Brewster, 44 Ohio St. 585, 9 N. E. Rep. 683; Marmet v. State, 45 Ohio St. 68, 12 N. E. Rep. 463.

The recent decision in Pittsburg, C. & St. L. Ry. Co. v. State (Ohio Sup.), 30 N. E. Rep. 435, is not in conflict with these cases. There the tax was upon property levied by its miles in length, and hence not permissible under the provision of the constitution requiring all taxes on property to be levied by a uniform rule according to its true value in money. Whether the sum required by this statute for filing

articles of corporation be termed a "fee," a "tax," or an "assessment," is, we think, immaterial, for it is clear that it is not a tax on property. The filing and record of such articles is simply an authority or license to the person filing them to form a corporation, and the sum paid therefor is the consideration demanded and paid the State for the grant of the right to be a corporation. We fail to perceive anything in the principles of government or sound policy that should forbid the State from making such an exaction even for the purposes of general revenue. The franchise is valuable to the corporators, or, it is fair to assume, it would not be sought; and that the burdens of government are greatly increased by the formation of corporations is daily seen in the business of the courts and the police establishment of the State. It is further claimed that the exaction made by the statute violates that principle of equality that should underlie all taxation. That this principle should not be disregarded is clear; but perfect equality is not attainable in any system of taxation. This, however, is equal in the sense that it applies to the formation of all incorporated companies, and is imposed according to the amount of the capital of each; and in this respect it is neither unequal nor unusual. Cooley, Const. Lim. 608. The fact that it does not apply to companies already formed does not make it unequal. If that were so, then a change in any fee bill, or rate of charges, would be open to the same objection. The law operates upon the future, and its equality must be determined by the future, and not the past.

It is also claimed that the statute is void because it does not state the object for which the tax is imposed, as required by section 5, art. 12, of the constitution. It may be a question whether this section has any application to the case. Baker v. City of Cincinnati, 11 Ohio St. 544. But, if it does, the objection is met by the provisions of section 181*a*, Rev. St., that "all money paid into the State treasury, the disposition of which is not otherwise provided by law, shall be credited by the auditor of State to the general revenue fund." It is not necessary that the object should be stated in the very statute imposing the tax. It is sufficient, we apprehend, if the object distinctly appear from the statute, read in connection with some other provision found elsewhere in the statutes of the State; and, if the raising of a fund for general revenue purposes had been expressed in section 148*a* as amended, the purpose of the exaction would have been no more definitely stated than it is by reading that section in connection with section 181*a*.

We now inquire whether the statute is a restraint upon interstate commerce; the Wabash Railroad Company, as consolidated, embracing a system of roads located in Ohio, Michigan, Indiana, Illinois, and Missouri. The power to regulate commerce between the States belongs without doubt to the congress of the United States; the States cannot interfere with or regulate it in any way. But the duty of the States in respect to such commerce is negative, and not active. No State is under any federal obligation to furnish highways, nor to create agencies of any kind, for the purpose of facilitating interstate commerce. The grant of the right to be a corporation is within the sovereign discretion of the State, and cannot be controlled by any other power, State or federal. As it may create or withhold such franchises at its pleasure, it may grant them upon such conditions as best suit its own notions of convenience and policy. Hence the State violates no federal duty towards non-residents, whether corporate or natural persons, in refusing them corporate franchises, or in making an exaction for the grant of the same, simply because such persons may have the control of a system of railways used in interstate commerce.

"The right of privilege," says Justice Field, "to be a corporation, or to do business as such body, is one generally deemed of value to the corporation, or it would not be sought in such numbers as at present. It is a right or privilege by which several individuals may unite themselves under a common name, and act as a single person with a succession of members, without dissolution or suspension of business and with a limited individual liability. The granting of such right or privileges rests entirely within the discretion of the State, and of course, when granted, may be accompanied by such conditions as the legislatnre may judge most befitting to its interest and policy. It may require as a condition of the grant of the franchise, and also of its continued exercise, that the corporation pay a specific sum to the State each year or month, or a specific portion of its gross receipts, or of the profits of its business, or a sum to be ascertained in any convenient mode which it may prescribe." Home Ins. Co. v. State of New York, 134 U. S. 599, 10 Sup. Ct. Rep. 593. And so, in Monroe Sav. Bank v. Rochester, 37 N. Y. 365, it is said: "It must be regarded as a sound doctrine to hold that the State, in granting a franchise to a corporation, may limit the powers to be exercised under it, and annex conditions to its enjoyment, and make it contribute to the State. If the grantee accepts the boon, it must bear the burden." The fee required to be paid for the filing of such articles can, in no proper sense, be said to be a tax upon the business of commerce between the States. No commodity is taxed directly or indirectly, and the business of the Wabash system is in no way hindered or embarassed. It is not required to become a consolidated company under the laws of Ohio, nor is the transaction of its business made to depend upon its filing such articles and becoming a corporation. It can continue its business with the same freedom in the State, whether it incorporates or not under its laws. That the franchise of being a corporation, under the laws of this State, would be fruitful of advantages to those who own and operate the Wabash system, may well be inferred from the fact that they are anxious to obtain it. And the State is in no way averse to making the grant. It simply requires that its terms be complied with; and, as we have shown that it is under no federal obligation to make such grant, there is no ground upon which they can, as we see, object to the terms. * * *

Many difficulties have been suggested as arising if a company formed by the consolidation of an Ohio company with a company of another State should be held to be a new corporation. We would have it is claimed, the anomaly of a corporation with a capital stock, without the individual liability of the stockholders. The fallacy consists in the assumption, for such would not be the case. There has been some diversity of opinion as to the *status* of a corporation formed by the consolidation of companies under the laws of different States. But it seems pretty well settled, upon principle at least, that, where formed under co-operative legislation of the different States, it becomes a corporation in each State where its road is located. It is a legal entity, residing and doing business in different States, with a *status* in each, derived from and determined by the laws of that State. If by the laws of one of these States an individual liability attaches to the holder of stock in an incorporated company, the same liability will attach to its stockholders. The liability will, in this regard, depend upon the laws of the State where it is sued. Whatever may be the

holding in other States, there can be no doubt but that in Ohio the stockholders of an incorporated company, however formed, are individually liable for its debts to the extent fixed by statute. The stockholders of the company in the other States must be presumed to know what the Ohio law is in this regard, and, by agreeing to consolidate with an Ohio company, must be presumed to assent to the individual liability attached by Ohio law to the ownership of stock in an Ohio Company.

HUSBAND AND WIFE—WIFE'S SEPARATE ESTATE—LIABILITIES FOR NECESSARIES.—The Supreme Court of Missouri in Gabriel v. Mullen, 19 S. W. Rep. 1099, hold that under Rev. Stat. 1879, § 3269, which provides that the wife's personal property shall be her separate property and shall not be liable to be taken for the debts of the husband but shall be subject to execution for any debt of the husband for necessaries for the wife or family, a wife's separate property may be seized on execution under a judgment against the husband alone where the judgment debt was for necessaries for the family, overruling Bedsworth v. Bowan, 104 Mo. 44. Sherwood, C. J., and Macfarlane and Gantt, JJ., dissent. The court through Barclay, J., says:

The statute of 1875 declares that the personal property of the wife shall "be and remain her separate property, and under her sole control, and shall not be liable to be taken by any process of law for the debts of the husband; . . . but such property shall be subject to execution . . . for any debt or liability of her husband, created for necessaries for the wife or family." Rev. St. 1879, § 3296. Prior to this enactment, the wife's personalty in possession became answerable, upon her marriage, for all her husband's debts of every nature. When the legislature saw fit to create a statutory separate estate in such property, and vested it in her, free of liability, "to be taken by any process of law for the debts of the husband," it had the power to determine, as it did, the extent of the new estate, by providing that such property should remain (as it had been) "subject to execution" for the particular class of debts indicated. This court had already held that a wife, owning a sole and separate equitable estate, might, nevertheless, charge her husband for necessaries for her support. Miller v. Brown (1871), 47 Mo. 508. In view of his personal liability for such necessaries, the legislature, no doubt, considered it proper and just that her personal property, as well as his should continue liable therefor. So it placed the limitation mentioned upon her separate ownership of it. That such was the intent of this legislation we think its terms plainly show.

But it appears to be supposed that to permit the enforcement of such a liability, by means of an ordinary execution on a judgment against the husband only, would violate some right of the wife to have a "day in court." We have already seen that the statute not merely charges her property with a liability for such necessaries, but expressly subjects it "to execution" for that kind of a debt "of her husband." This is precisely the mode in which such property was reached for the satisfaction of general liabilities of the husband, before the passage of the amendment of 1875. Barbee v. Wimer (1858), 27 Mo. 140. In construing any statute, it is proper, and often useful, to consider the then existing state of the law as casting light on the intended scope of the change made. Here it seems that the former liability of the wife's property, as to debts of the husband for family necessaries, was designed to continue. Then what more natural and reasonable than that the existing mode of enforcing such liability should likewise be continued, as the language of the statute imports. But is it in harmony with the constitution to so provide? Would it be "due process of law" to permit her property to be seized upon an execution against the husband for such a debt without a previous hearing and judgment to which the wife was a party? Of course, she always has the right to try the issue whether or not the execution debt was in fact created for such necessaries. She is not concluded on that issue by a judgment against her husband to which she is no party, and hence there is nothing in the suggestion that she might be bound by his collusive action with the creditor in allowing the judgment to go. Since the act of 1883 (Sess. Acts 1883, p. 113) she may sue "in her own name, and without joining her husband," and may herself raise the issue as to such necessaries in several ways,—by replevin, (as in the case at bar); or by notice to the officer of her claim, and an action upon his bond; or against him alone for trespass; perhaps in other forms. But it is nothing new or abnormal in legal procedure that property should be made liable to a particular charge, and subjected to seizure accordingly, without a prior hearing as to the facts creating such charge. It rests in the sound discretion of the legislature to permit this, within constitutional limits. Familiar illustrations of such proceedings are close at hand. Thus, where one has received, without evil motive, a gift of personal property from another, who turns out to have been then insolvent, a creditor of the latter (on obtaining a judgment against him) may levy on the subject of the gift, in possession of the donee, without any previous action against him to establish the fact of such gift. In such case the title passes out of the giver; but as to his existing creditors, however honest in fact the transaction may be, the title only passes subject to their just demands against it, by force of positive law. Rev. St. 1889, § 5170; Woodson v. Pool (1854), 19 Mo. 340; Potter v. McDowell (1860), 31 Mo. 62. Similar consequences follow where a person buys personalty with a purpose to aid the seller in defrauding his creditors. Though the title may pass as between the immediate parties, the creditors, upon an execution against the seller, may take it from the buyer in satisfaction of their claims, without any prior legal ceremony to adjudicate the facts mentioned.

Again, where one acquires, in good faith and for full value, personal property of the defendant in a justice's judgment, after the execution thereon has been placed in the hands of the constable, he takes the title subject to the charge created by the execution, which may be enforced, by a diligent creditor, by mere levy upon the property in the possession of the purchaser. State v. Blundin (1862), 32 Mo. 387. It was never supposed to be necessary to begin a new action against the latter to obtain another judgment asserting such lien. The law itself impresses these limitations upon the ownership of property in such circumstances as have been indicated in these examples. In the case of a married woman, it imposes upon her statutory title of personalty the burden of responding to an execution against the husband upon a debt created for

family necessaries. The statute fixes that liability in the nature of a charge upon her property, where certain essential facts exist. Their existence she may deny and contest, if desired, in various modes, already alluded to; but there is nothing of an unconstitutional nature in the law creating such a charge. It is "due process of law," as much so as are statutes declaring that, upon certain specified facts, a charge, by way of lien, shall arise upon personal property, in whosesoever hands it may be, to secure a debt due by another. Spofford v. True (1851), 33 Me. 283; Sims v. Bradford (1883), 12 Lea. 434; Winslow v. Urquhart (1875), 39 Wis. 260. The liability of the wife's personal estate to respond to an execution for the husband's judgment debt for family necessaries is nothing but a statutory qualification or condition annexed to the separate ownership conferred. It is not an entirely extraordinary condition. Formerly, under an Iowa statute, the wife was invested with a qualified separate estate in personalty, on condition that an inventory of such property should be filed for public record, in default of which the property, if in the husband's custody, should be liable in some circumstances for his general debt; and in several cases the supreme court approved the enforcement of such liability by direct levy on the wife's property, on execution against the husband alone, without any preliminary proceeding against the wife, because the statute so provided. Williams v. Brown (1869), 28 Iowa, 247; Presnall v. Herbert (1872), 34 Iowa, 539. Again, in Massachusetts, a statute made the wife's personal and real property separate estate, and declared it not liable to be taken for his debts; but with the condition that, if she carried on business on her own account, a certain certificate to that effect should be filed, in default of which the property employed in such business should "be liable to be attached as the property of the husband, and to be taken on execution against him;" and it was held that, where the facts mentioned in the law appeared, the liability so arising was enforceable in the manner the statute specified, namely, by simple levy, on the wife's property. Chapman v. Briggs (1866), 11 Allen, 546; Dawes v. Rodier (1878), 125 Mass. 425; Snow v. Sheldon (1879), 126 Mass. 332. We have mentioned these cases from Iowa and Massachusetts, not as having an authoritative bearing on the point directly presented for a ruling in the case at bar, but merely to show that the conditions and limitations on which such separate estates have been created by statutes are accorded, and should be accorded, like effect and force as the other provisions of such legislation. We do not think the imposition of the condition contained in the Missouri statute under discussion can properly be regarded as depriving the wife of anything "without due process of law." As to claims of the kind, named in the statute, no separate rights attach, because the law itself so declares.

The "necessaries" here in question consisted of medical attendance upon Mrs. Gabriel, her husband and children. All these persons we regard as included in the term "family," used in this statute; and that the services described are "necessaries," within its meaning we consider settled by the ruling on that point in Alexander v. Lydick (1883), 80 Mo. 341. That decision also determines that the giving of a note by the husband for such indebtedness, without more, does not change the nature of the latter, or prevent the application of the statute in reaching property of the wife.

In the case just cited it was unanimously held by this court (approving a well-considered opinion of Commissioner Martin) that the effect of section 3295 of the Revision of 1879 (same as section 6868 of 1889) was to expressly subject the issues and products of the wife's separate statutory real estate to an execution against the husband for necessaries for the family. It will be seen that the language, as to liability to such an execution, is the same in section 6868 (of 1889) and the next following section, which forms the subject-matter of present consideration. That ruling, therefore, bears directly upon the case now before us; but its force was not recognized in the more recent opinion of the second division of this court by our learned Brother Macfarlane in Bedsworth v. Bowman, 104 Mo. 44, 15 S. W. Rep. 990, discussing the same question.

The foregoing comments on the case at bar sufficiently indicate our difference from the views expressed in the decision just mentioned, except, perhaps, on one point. The judgment of the second division seems to be based, in part, on inferences from decisions in other States, the statutes of which are said to be "similar to the one under consideration." We have been unable to discover the similarity. The statute of Iowa, under which Lawrence v. Sinnamon (1865), 24 Iowa, 80, was decided, and which has been repeated, in almost the same words, omitting the phrase in brackets, in Illinois—Acts 1874, ch. 68; Rev. St. 1891, § 15—and Oregon,—Phipps v. Kelly (1885), 12 Or. 215, 6 Pac. Rep. 707,—provides that "the expenses of the family and the education of the children, [and such other obligations as come within the equity of this provision], are chargeable upon the property of both husband and wife, or of either of them, and in relation thereto they may be sued jointly or separately," (Rev. St. Iowa 1860, § 2507, same as section 2214, Code 1873); while the section next preceding that quoted declares that the contracts and liabilities of the wife may be enforced "by or against her to the same extent and in the same manner as if she were unmarried," (Rev. St. Iowa 1860, § 2506; same as section 2213, Code 1873). Provisions of the Alabama Code, in force when Childress v. Mann (1858), 33 Ala. 207, was announced, were as follows: "1987. For all contracts for articles of comfort and support of the household, suitable to the degree and condition in life of the family, and for which the husband would be responsible at common law, the separate estate of the wife is liable, to be enforced by action of law against the husband alone, or against the husband and wife jointly." Code 1852, same as section 2376, Code 1867. "1988. If suit is brought against the husband alone, upon any such contract, and execution is returned Not satisfied, the separate estate of the wife may be sold, by order of the court, for the satisfaction of the judgment; ten days' notice in writing being given to the wife of the intended motion." Code 1852, same as section 2377, Code 1867. Under such legislation, the supreme court held that, as the wife's liability was statutory, the specific remedy pointed out by the law was exclusive,—Janney v. Buell (1876), 55 Ala. 408,—but there is no intimation in the Alabama decisions that the statutory method of reaching her separate property is invalid. The law of Pennsylvania, at the time of the decisions in Sawtell's Appeal (1877), 84 Penn. St. 310, and Hoff v. Koerper (1883), 103 Pa. St. 396, after making "every species and description of property" of the wife's separate estate, further provided: "In all cases where debts may be contracted for necessaries for the support and maintenance of the family of any married woman, it shall be lawful for the creditor in such case to institute suit against the husband and wife for the price of such

necessaries, and, after obtaining a judgment, have an execution against the husband alone; and, if no property of the said husband be found, the officer executing the writ shall so return; and thereupon an *alias* execution may be issued, which may be levied upon and satisfied out of the separate property of the wife, secured to her under the provisions of the first section of this act; provided, that judgment shall not be rendered against the wife in such joint action, unless it shall have been proved that the debt sued for in such action was contracted by the wife, or incurred for articles necessary for the support of the family of the said husband and wife." Act 1848, Brightly's Purd. Dig. (11th Ed.) p. 1151, § 15. The courts of that State have held that the word "or," in the last phrase, should be read as "and;" and consequently that the wife must participate in creating such an indebtedness to make it a charge against her separate estate at all. Murray v. Keyes (1860), 35 Pa. St. 384.

A statute of Mississippi was also mentioned in this connection by our Brother Macfarlane, but, as no case from that State was cited, and the law on this topic has undergone important changes there, as elsewhere, we cannot know what legislation was in view; but we see nothing in the local statutes relating to this subject (Code 1857, p. 336, arts. 25, 26, sections 1780, 1783, Code 1871; section 1167, Code 1880) which bears any similarity to that feature of our law now calling for construction. Between the statutes which have been quoted and ours this difference will be noted readily; that the former provide methods of charging the property of both spouses for certain family indebtedness quite unlike the mode indicated by the Missouri statute. By the latter the wife's personalty is pronounced "subject to execution for the debt or liability of her husband" created for such necessaries, just as it had been before the separate statutory estate in such property came into existence. We have found no decision in other States holding that such a limitation on her statutory estate involves any violation of her constitutional rights, and we do not regard it as having such effect. We think that our able and learned associates of the second division were in error in ruling in Bedsworth v. Bowman (1891), 104 Mo. 44, 15 S. W. Rep. 990, and that that decision should not be followed as a precedent.

SPECIAL ACTS CONFERRING CORPORATE POWERS ON MUNICIPAL CORPORATIONS.

In many States constitutional restraints are placed on legislative power to confer municipal corporate powers by special act. By the constitutions of Ohio, Illinois, Michigan, Wisconsin, Kansas, Nebraska, Virginia, Missouri, Arkansas, California, New Jersey, Indiana, West Virginia, Tennessee and Florida, the legislatures are expressly forbidden to create municipal corporations by special act, but must provide for their organization by general law.[1]

Several of these State constitutions provide that "the legislature shall pass no special act conferring corporate powers."[2] This provision has been judicially construed to mean that a legislature not only cannot by special act create a corporation, but cannot by special act confer additional powers upon a corporation already existing,[3] and to include municipal as well as private corporations.[4] This evidently was the intent of the framers of the first constitution which has this phraseology.[5] In this article we shall consider conferring corporate powers only with reference to municipal corporations.

A statute to come within the inhibition must be special or local in its nature and also confer corporate powers. A special act that does not confer corporate powers,[6] or a general law that does,[7] is not in contravention of the constitutional provision that "the legislature shall pass no special act conferring corporate powers."

As to Special Acts the General Principle.—It has been said that "a law framed in general terms, restricted to no locality, and operating equally upon all of a group of objects, which having regard to all purposes of legislation are distinguished by characteristics sufficiently marked and important to make them a class by themselves is not a special or local law but a general law."[8] But the classification must be just and reasonable and not arbitrary.[9] And it is for the courts to determine whether or not the classification is authorized by the constitution.[10]

Classification by Population.—A division of municipal corporations into classes according to population, and legislation adapted to the different classes, is now generally conceded

[1] 15 Am. Ency. of Law, p. 959; Stimson's Statute Law, § 441.

[2] Ohio Const. art. 13, § 1; Kansas Const. art. 12, § 1; Nebraska Const. art. 8, § 1.

[3] State v. Cincinnati, 20 Ohio St. 18; Wyandotte City v. Wood, 5 Kan. 603.

[4] Atchison v. Bartholow, 4 Kan. 124; Gilmore v. Norton, 10 Kan. 491; State v. Cincinnati, 20 Ohio St. 18; State v. Cincinnati, 23 Ohio St. 445; State v. Pugh, 43 Ohio St. 98; State v. Mitchell, 31 Ohio St. 592; State v. Brewster, 39 Ohio St. 653; State v. Powers, 38 Ohio St. 54. Compare State v. Newark, 40 N. J. L. 550.

[5] See debates of Ohio Constitutional Convention, p. 304 *ff.*

[6] State v. Covington, 29 Ohio St. 102; State v. Powers, 38 Ohio St. 54; State v. Davis, 23 Ohio St. 434; State v. Pugh, 43 Ohio St. 98; State v. Bridge Co., 20 Kan. 404; Corp. Powers of Council Grove, 2 Kan. 622; State v. Stormont, 24 Kan. 695.

[7] State v. Hawkins, 44 Ohio St. 98.

[8] State v. Parsons, 40 N. J. L. 123.

[9] Bronson v. Oberlin, 41 Ohio St. 476.

[10] Appeal of Ayers, 122 Pa. St. 266.

not to be a breach of the constitutional prohibition against the enactment of special laws, "the distinction is this: that a new law applying to a certain class of cities, fixed by previous legislation, into which other municipal corporations may enter, and from which they may pass into other classes by increase of population, is not special but general, since the grade of any particular city is not designated by the act, but depends upon its growth in population, as it may by such growth pass from one class to another."[11] The mere fact that there are a limited number of cities or even one only, having the specified population which is necessary to the cities within the class does not necessarily render the act unconstitutional.[12] But it is otherwise where a population is based on "the last federal census" (for in this case the cities might as well be specified by name), or when only the city can be affected by the act owing to the fact that it must be proceeded under within a certain time, as within five days after passage, and it is not possible for another city to pass into the same class within the limited time.[14]

Classification Otherwise than by Population.—One court at least has said that there can be no classification except by population and that geographical distinctions cannot be resorted to without entering the domain of special legislation.[15] An act in which four cities are specially named as constituting a class is a special law.[16] A proviso is an act that "it shall not apply in and to cities commonly known as seaside and summer resorts" has been held fatal.[17] The designation of particular certificates of indebtedness is not a sufficient basis for classification.[18] An act which applies to fifty-eight of the sixty counties of a State has been held a general law,[19] and "incorporated towns having within their limits a college or university" has been deemed proper classification. But generally, if the act chooses characteristics and incidents as marking a distinct class, of too special, restrictive and important a character, then it will not have the quality of a general but of a special law.[20]

As to Conferring Corporate Powers—Statement.—Whether a special act of a legislature confers corporate powers or not on a municipal corporation depends both upon the nature of the grantee and the nature and effect of the powers granted.

As to the Nature of the Grantee.—If new or additional powers are granted an existing corporation or a new corporation is created, by a special act of the legislature such statute is clearly within the inhibition under consideration. If, however, the grantees are individuals or an incorporated body, certain powers may be granted them without contravening this constitutional provision although the same grant might otherwise confer corporate powers. A legislature cannot avoid this prohibition by conferring powers on an officer or board of a city. This simply confers the powers upon the corporation.[21] The same is true where corporate powers are vested in a city council.[22] A distinction has been made by the courts between acts of the legislature which confer a power to appoint city boards, etc., upon an officer of the State and an officer of the municipal corporation. It has

[11] As to classification by population generally, see State v. Hawkins, 44 Ohio St. 98; State v. Hudson, 40 Ohio St. 137; State v. Covington, 29 Ohio St. 102; State v. Mitchell, 31 Ohio St. 592; State v. Brewster, 39 Ohio St. 653; State v. Pugh, 43 Ohio St. 98; Welker v. Potter, 18 Ohio St. 85; Walker v. Cincinnati, 21 Ohio St. 14; Bronson v. Oberlin, 41 Ohio St. 476; Megill v. State, 34 Ohio St. 228; Land, etc. Co. v. Brown, 73 Wis. 294; Topeka v. Gillett, 35 Kan. 431; State v. Hunter, 38 Kan. 578; State v. Graham, 16 Neb. 74; State v. Berka, 20 Neb. 375; Kilgore v. Magee, 85 Pa. St. 401; Wheeler v. Philadelphia, 77 Pa. St. 338; Reading v. Savage, 124 Pa. St. 328; *In re* Report of Commissioners of Elizabeth, 49 N. J. L. 488; State v. Circuit Court of Gloucester County, 50 N. J. L. 585; People v. Draper, 15 N. Y. 532; State v. Camden, 50 N. J. L. 87; Daniels v. Henshaw, 76 Cal. 436; *Ex parte* Swann, 96 Mo. 44; Rutherford v. Hamilton, 97 Mo. 543; Rutherford v. Heddins, 82 Mo. 388; State v. Pond, 93 Mo. 606; Burch v. Hardwicke, 30 Gratt. (Va.) 34; Police Commissioners v. Louisville, 3 Bush (Ky.), 597; Diamond v. Cain, 21 La. Ann. 309; Market v. State, 45 Ohio St. 63.

[12] State v. Hudson, 40 Ohio St. 137; Fellows v. Walker, 39 Fed. Rep. 651; State v. Miller, 100 Mo. 439, 30 Am. & Eng. Corp. Cas. 272; Kilgore v. Magee, 85 Pa. St. 401.

[13] State v. Anderson, 44 Ohio St. 247; State v. Ellett, 47 Ohio St. 90; State v. Mitchell, 31 Ohio St. 592; McGill v. State, 34 Ohio St. 228.

[14] State v. Pugh, 43 Ohio St. 98.

[15] Com. v. Patton, 88 Pa. St. 258; People v. Cooper, 83 Ill. 585; State v. Winch, 45 Ohio St. 663.

[16] Corp. Powers of City of Council Grove, 20 Kan. 619.

[17] Clark v. Cape May, 50 N. J. L. 558.

[18] Freeholders v. Buck, 51 N. J. L. 155.

[19] People v. Newburgh Plank Road Co., 86 N. Y. 1.

[20] Am. Enc. of Law, vol. 15, p. 984.

[21] City v. Anderson, 44 Ohio St. 247; Simpkinson v. Board of Public Works, 13 W. L. B. 614; State v. Brown, 7 Am. Law Rec. 652.

[22] State v. Cincinnati, 23 Ohio St. 445.

been generally held that where a State officer has the power no corporate powers are conferred upon the municipality, but where the appointing power is in a city officer, corporate powers are conferred on the city through this officer. Thus it has been held that an act authorizing the governor of a State to appoint police commissioners did not confer corporate powers.[23] But an act authorizing a city council,[24] or a mayor of a city,[25] to make the same appointments was invalid. It seems that county officers may exercise this power of appointment without coming within the prohibition, for example, the judges of a county court may select and name a board of police commissioners for a city within the county without conferring corporate powers.[26]

A legislature has power to authorize a board of trustees appointed by the governor of a State to establish an agricultural college. This appears to be simply a selection by the state of agents to act for it although having power to direct etc., like a corporation.[27] Common school districts and boards of education are not corporations within the meaning of the section under consideration,[28] nor are counties or townships for some purposes. In general to confer corporate powers upon a municipality the grant from the legislature must be to the city or some officer, agent or board of such city.

As to the Powers Conferred.—No general distinguishing line can be drawn from the opinion of the courts as to what constitutes conferring corporate powers. The decision in each case rests upon the peculiar circumstances surrounding the particular case. The legislature cannot by special act confer upon a municipal corporation, on certain conditions, "the power of municipal government, the power of police regulation, the power of judicial jurisdiction and of taxation and assessment over territory not before within the city limits,"[29] nor grant additional police powers and regulations to a particular city,[30] nor authorize a board of public works of a city of a particular class to borrow money to pay deficiencies already existing in certain city funds and for deficiencies for a particular year,[31] nor direct a city improvement of streets and the issue of bonds of such city to be used to raise money to pay for it although the property owners are required to be the promoters of such improvement,[32] nor limit an act in its application to a single city and a single election and the issue of specific bonds.[33]

A legislature confers corporate powers upon a city by a special act which requires the rules and regulations adopted by the trustees of a city hospital to be submitted to the city council for their approval and declares that when they are approved by that body they shall have full force in law as other ordinances of the city.[34]

Acts of the legislature do not fall within the constitutional prohibition against conferring corporate powers which authorize a municipal corporation to release a special lot from part of an assessment.[35] A legislature may also exercise taxing power of the State and the power of apportioning taxation by imposing duties upon municipalities.[36] It may legalize proceedings of a municipal corporation even after negotiable bonds have been issued without authority for the purpose of raising money to construct a high school building within the limits of the city,[37] or authorize a school district to issue bonds to build a school house.[38]

A city ordinance granting permission to a street railroad company to extend its track, does not confer corporate powers. It is merely a permit to the corporation to exercise the corporate powers conferred by general law.[39] An act of the legislature which provides "that when municipal corporations which may have heretofore, by ordinance, authorized the use of streets for certain pur-

[23] State v. Covington, 29 Ohio St. 107.
[24] State v. Anderson, 44 Ohio St. 247.
[25] State v. Smith, 25 W. L. B. 139.
[26] State v. Baughman, 38 Ohio St. 456.
[27] Neil v. Trustees, etc., 31 Ohio St. 15; State v. Circleville, 20 Ohio St. 362.
[28] State v. Powers, 38 Ohio St. 54; Beach v. Leahy, 11 Kan. 23.
[29] State v. Cincinnati, 20 Ohio St. 18; City of Wyandotte v. Wood, 5 Kan. 603.
[30] State v. Pugh, 43 Ohio St. 98.
[31] Simpkinson v. Board of Public Works, 13 Bull. 614.
[32] State v. Mitchell, 31 Ohio St. 592; Atchison v. Bartholow, 4 Kan. 124; Gilmore v. Norton, 10 Kan. 491, 495.
[33] Bank v. Iola, 9 Kan. 697. See also Gilmore v. Norton, cited above; State v. Stormont, 24 Kan. 697.
[34] State v. Cincinnati, 23 Ohio St. 445, 446.
[35] State v. Hoffman, 35 Ohio St. 435.
[36] State v. Circleville, 20 Ohio St. 362.
[37] Read v. Plattsmouth, 107 U. S. 568.
[38] Beach v. Leahy, 7 Kan. 23.
[39] Sims v. Street Railroad Co., 37 Ohio St. 556.

poses, such ordinances shall be valid'' is not in conflict with the constitutional section prohibiting conferring corporate powers.[40] A village council may by ordinance authorize the condemnation of the land for the purpose of having the county commissioners build an avenue thereon under a special law granting them authority so to do.[41]

This prohibition has no application to statutes providing for the surrender of corporate powers or taking them away. (See Judge Okey's argument in State v. Pugh, 43 O. S. 134.)

As to Changing Agencies.—Where certain corporate powers have been granted a municipal corporation to be executed by certain boards or other agencies provided for by the legislature, it may change such agencies by which to exercise those powers already possessed provided that no new power is granted. Thus a board of trustees, consisting of mayor, the director of the city infirmary eldest in commission, and five trustees to be appointed by the governor and judges of the county and city courts may succeed and exercise the same powers as a commission consisting of the mayor and four associates appointed by him with the consent of the city council inasmuch as no additional corporate power is conferred upon the city.[42]

FRANK O. LOVELAND.

Cincinnati, Ohio.

[40] Kumler v. Silsbee, 38 Ohio St. 445.
[41] Purcell v. Riverside, 1 C. C. 12.
[42] State v. Davis, 23 Ohio St. 434.

CIVIL RIGHTS—RULES OF THEATER—SEPARATE SEATS.

YOUNGER V. JUDAH.

Supreme Court of Missouri, Division No. 1, July 2, 1892.

The provisions of the fourteenth amendment, prohibiting States from making or enforcing laws abridging the rights of citizens or denying to any persons equal protection of the laws, apply exclusively to enactments by the State, and cannot be extended to the rules of a theater reserving certain seats for white persons exclusively.

BLACK, J.: The questions presented for our consideration in this case arise out of the action of the court in sustaining a demurrer to the plaintiff's evidence. The substantial averments of the petition are that the defendant was the lessee of the Ninth Street Theater in Kansas City; that plaintiff purchased two tickets calling for seats in the orchestra, and that defendant and his employees unlawfully and maliciously refused to seat him in the seats so purchased. There is the further allegation that defendant and his agents unlawfully, maliciously, and insultingly ejected plaintiff from the theater. The evidence discloses these facts: After the plaintiff had purchased the tickets as alleged, he and his companion, a colored woman, passed up a flight of stairs. An employee, stationed at the upper landing, received the tickets, detached portions of them, and handed the seat coupons back to the plaintiff. He and the woman passed to the orchestra floor, where he gave the seat coupons to an usher, and they all three started towards the seats. On their way, this usher was met by another one, and the two had a conversation. Plaintiff, in his evidence, says they held a "whispered confab for a few minutes;" that during this conversation he overheard the word "nigger;" that one of the ushers informed him he could not have the seats; that there had been some mistake. After a further conversation the usher said: "You cannot stay here. It is against the rules." The usher then proposed to exchange the tickets for others, and seat him in a different part of the house, and for that purpose started up to the balcony, but the plaintiff refused to follow. As to what then occurred, the plaintiff testified: "I went on down to the box office, and presented the tickets to the person who sold them to me, and asked him why I could not have the seats. He seemed to be indignant and said, You can have them. He looked at me again, and I suppose he discovered that drop of African blood in me, and said: It is a mistake; those seats are occupied.'" The person in charge of the ticket office offered to exchange the tickets for tickets in the balcony, or refund the money paid by plaintiff, but the latter refused both offers, and left of his own volition. He and his companion went to another theater, where he procured seats set apart for colored persons. He had attended entertainments at the defendant's theater on former occasions, and, when in company with colored persons, took a seat in the balcony, but when alone was admitted to the orchestra. He says the usher on the occasion in question used sneering language, but his further examination shows clearly that the usher did no more than say in firm but respectful language that he could not have the seats because it was against the rules of the house. The charge made in the petition that defendant ejected plaintiff from the theater is not supported by any evidence, and must therefore be disregarded.

The tickets for seats in the orchestra were sold to plaintiff on the supposition that they were to be used by white persons. This is evident. It is clear, too, that defendant had a rule, to the effect that colored persons attending his place of amusement should occupy seats in the balcony; and the only question in this case is whether he had a right to make and enforce such a rule. If he had, the plaintiff has no cause of action. It is earnestly

insisted on behalf of the plaintiff that such a rule amounts to discrimination against colored persons, and that such discrimination is prohibited by the fourteenth amendment of the constitution of the United States. The clauses of that amendment relied upon by the plaintiff are those whereby it is declared that "no State shall make or enforce any law which shall abridge the privileges and immunities of the citizens of the United States; * * * nor deny to any person within its jurisdiction the equal protection of the laws." These clauses do not undertake to confer new rights, nor do they undertake to regulate individual rights. They are simply prohibitory of State legislation, and of State action. All this was held and ruled in the Civil Rights Cases, 109 U. S. 3, 3 Sup. Ct. Rep. 18. As there stated, "individual invasion of individual rights is not the subject-matter of the amendment." This State has enacted no law having any application to the present case. It does not undertake to say how theaters and other places of amusement shall be managed. As the State does not by itself or through the city of Kansas undertake to regulate theaters, and as the clauses of the fourteenth amendment before noted are prohibitory of State action only, they have nothing to do with the question in hand. There is nothing upon which the prohibitions can operate. Many of the States have enacted laws known as "civil rights statutes," and we are cited to cases upholding and giving effect to such laws. Under them it has been held that the proprietor of a theater will be liable in damages for a refusal to admit a colored person, (Joseph v. Bidwell, 28 La. Ann. 382; Donnell v. State, 48 Miss. 661); and for a refusal to admit a colored person to the several circles or grades of seats in a theater, (Baylies v. Curry, 128 Ill. 287, 21 N. E. Rep. 595); and for refusing a colored person admission to a skating rink, (People v. King, 110 N. Y. 418, 18 N. E. Rep. 245); and for drawing any line of distinction between a white and black man at a restaurant, (Ferguson v. Gies, 82 Mich. 358, 46 N. W. Rep. 718). But, as we have no such statute, these cases furnish no aid in the solution of the question now in hand. We have held that our statute which establishes separate schools for colored children does not violate the fourteenth amendment, and this for the reason that separation of children for such purposes is but a reasonable regulation of the exercise of a right conferred upon all children, whether white or black. Lehew v. Brummell, 103 Mo. 546, 15 S. W. Rep. 765. And so it has been held in several States, as will be seen by the authorities cited in that case, and in the brief of defendant in this one. We believe it is conceded on all hands that a common carrier of passengers may make and enforce reasonable rules for seating passengers; and it has been held that such a carrier, in the absence of any statute to the contrary, may separate white and black passengers in a public conveyance, as a railroad car. West Chester, etc., Railroad Co. v. Miles, 55 Pa. St. 209. In Hall v. De Cuir, 95 U. S. 485, the defendant was the master and owner of a steamboat enrolled and licensed under the laws of the United States. The plaintiff, a colored woman, being refused accommodations, on account of her color, in the cabin specially set apart for white persons, brought suit for damages. She based her cause of action upon a statute of Louisiana, which provided that the rules prescribed by common carriers should make no discrimination on account of color. The State court construed the law as applying to those engaged in interstate commerce; but the Supreme Court of the United States held the act unconstitutional so far as it applied to foreign and interstate commerce. Says the court: "Congressional inaction left Benson [the defendant] at liberty to adopt such reasonable rules and regulations for the disposition of passengers upon his boat, while pursuing her voyage within Louisiana or without, as seemed to him most for the interest of all concerned. The statute under which this suit is brought, as construed by the State court, seeks to take away from him that power so long as he is within Louisiana. * * * We think the statute, to the extent that it requires those engaged in the transportation of passengers among the States to carry colored passengers in Louisiana in the same cabin with whites, is unconstitutional and void. If the public good requires such legislation, it must come from congress, and not from the State." While the statute was held void as to cases like the one then in hand, because it interfered with interstate commerce, still the opinion, as we view it, proceeds upon the theory that, in the absence of valid legislation, the defendant had the right to set apart a portion of the steamboat for the special and exclusive use of white passengers. If common carriers may make and enforce such rules, there can be no good reason assigned why proprietors of theaters may not do the same thing. This being so, it is not necessary to a proper disposition of this case to say how far or to what extent theaters are to be regarded as public places; nor is it necessary to say to what extent they may be made public places by statute or local municipal laws. In any event, the proprietors of theaters may make and enforce such rules as the one now in question. Colored persons have their own schools, their own churches, and often their own places of amusement. Whites attending places of amusement designed specially for colored persons may be required to occupy separate seats. When colored persons attend theaters and other places of amusement conducted and carried on by white persons, custom assigns to them separate seats. Such separation does not necessarily assert or imply inferiority on the part of one or the other. It does no more than work out natural laws and race peculiarities. It ordinarily contributes to the convenience and comfort of both. The colored man has, and is entitled to have, all the rights of a citizen, but it cannot be said that equality of rights means identity in all respects. Here the

defendant did not exclude, or attempt to exclude, colored persons from his theater. He provided accommodations for them, but in doing so required them to purchase tickets for and take seats in the balcony, and this rule adopted by him accords with the custom and usage prevailing in this State. Such custom has the force and effect of law until some competent legislative power shall establish some other and different rule. The defendant's rule was no more than a reasonable regulation which he had a right to make and enforce. The judgment is therefore affirmed. All concur.

NOTE.—A brief outline of the civil rights legislation will show the sources of the proper rules to which controversies of that character must be referred for decision. The most important of these enactments are the amendments to the federal constitution. The XIIIth, proclaimed Dec. 18, 1865, abolished slavery; the XIVth (July 28th, 1868), protected the rights of citizenship and life, liberty and property against adverse State legislation; and the XVth (March 30, 1870), declares that the right of a citizen of the United States to vote shall not be abridged by reason of his race, color or previous condition of servitude. Each amendment contains a section giving congress power to provide for enforcing it by appropriate legislation. The language of the amendments does not go beyond the abolition of slavery and the protection of the political rights of citizenship. The provisions of the earlier civil rights acts, by which it was sought to give the amendments effective operation, did not go beyond this. The acts of 1866 (14 Stat. at Large, ch. 31, p. 27), and of 1870 (16 Stat. at Large, ch. 114, p. 140), sought to wipe out the burdens and disabilities of slavery, and give all citizens, irrespective of race, color or previous condition of servitude, the same right to make and enforce contracts, to sue and be sued, to testify, to inherit, to take and to convey property as is possessed by white citizens. No effort was made by congress to adjust the social rights of individuals, which, as far as they are the subject of legal contemplation at all, had always been under the protection of the individual State sovereign until the enactment of the civil rights act of 1875—18 St. at Large, ch. 114, p. 335. By that act congress assumed to enact that "all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, public conveyances on land or water, theaters and other places of public amusements; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude." When this section was presented for the consideration of the Supreme Court of the United States it was held that it was unconstitutional, as unauthorized by the amendments and not within the province of the federal government; that it is not corrective legislation seeking to restrain the effect of adverse State laws, but is primary and direct in its character, taking immediate and absolute possession of the subject of the right of admission to inns, public conveyances and places of amusement. Civil Rights Cases, 109 U. S. 3. It follows that protection for political rights only of the citizen can be secured under this law. For the protection of his social privileges he must turn to the local State sovereign. And so we find in many States laws very similar in their terms to the above enactment of congress. These, being clearly within the functions of the State governments, have ordinarily been held valid. Besides the cases cited in the principal opinion, many others upholding the validity of such State civil rights laws are to be found in the books. Thus, under a Michigan statute securing to all persons "the full and equal accommodations, advantages, facilities and privileges of inns, restaurants and eating-houses," it was held that a restaurant keeper who refuses to serve a colored person with refreshments in a certain part of his restaurant, for no other reason than that he was colored, is civilly liable, though he offers to serve him by setting a table in a more private part of the house. Ferguson v. Gies, 82 Mich. 358, 46 N. W. Rep. 718. In Illinois a rule requiring colored persons to occupy particular rows of seats in a theater was held to be in violation of a statute (Act Ill., June 10, 1885), declaring their right to the "full and equal enjoyment of the accommodations" of theaters, etc. Baylies v. Curry, 30 Ill. App. 105; affirmed 128 Ill. 287. Under a Nebraska statute (Comp. St. Neb. ch 14 *a*) the rule is extended to barber-shops. Messenger v. State, 15 Neb. 674. Such statutes, *i. e.*, statutes prohibitiing the exclusion of persons from places of public resort by reason of race, color or previous condition of servitude, have been held not to infringe the constitutfional provision securing the right to life, liberty or property, but is a valid exercise of the police power. People v. King, 110 N. Y. 418. The court rests its conclusion upon the proposition that, although the innkeeper, carrier, proprietor of a theater, etc., is a private individual, his business is a public function, and by engaging in it he renders himself amenable to such proper regulations as the policy of the State requires, and quotes the language of Chief Justice Waite in Munn v. Illinois, 94 U. S. 113: "Where one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created." Compare Bowling v. Lyon, 67 Iowa, 536.

As to schools, the general rule seems to be in accord with Lehew v. Brumwell, 103 Mo. 546, cited in the principal case, that it is competent for the school board, in the absence of a statute prohibiting it, to classify the scholars according to color and establish separate schools. Ward v. Flood, 48 Cal. 36; People v. Board, 18 Mich. 400; State v. Stonemeyer, 7 Nev. 342; Cory v. Carter, 48 Ind. 327; Dallas v. Fosdick, 4 How. Pr. (N. Y.) 249. Sometimes a different rule prevails. Board v. Timon, 26 Kan. 1; Dove v. School District (Iowa), 41 Iowa, 689; Smith v. Directors, etc., 40 Iowa, 518; Clark v. Board, 24 Iowa, 266; People v. Board, 127 Ill. 613; People v. Board, 101 Ill. 308.

The following are among the enactments which have been held void as infringing the rights secured by the amendments and the civil rights acts: A law establishing common schools for colored children, but excluding them from any share in the common school fund previously established (Dawson v. Lee, 13 Ky. 49); a homestead act, as far as it excludes negroes from its benefits. Eubank v. Eubank, Ky. Law Rep. November, 1885, p. 295; Custard v. Poston, 1 S. W. Rep. 434. There was, however, a fourth section in the Civil Rights Act of 1875, which provides that no citizen shall be disqualified to serve as grand or petit juror in any State or federal court on account of race, color or previous condition of servitude. 18 Stat. at Large, ch. 114, p. 335, § 4. The effect of this provision is the protection of a political right manifestly within the scope of the amendments, and the

section was held constitutional and valid. *Ex parte* Virginia, 100 U. S. 339.

A Maryland statute (Act. Md. 1867. ch. 329; Act Md. 1870, ch. 410) requiring the names of jurors to be selected from two lists, one from the tax books of "the white male taxable inhabitants," and the other from all the names on the poll books, and that the selection shall be with special reference to intelligence, sobriety and integrity, but not with reference to political opinions, was held not to prevent the selection of colored men, and not invalid. Cooper v. State, 64 Md. 40, 20 Atl. Rep. 986. For other cases illustrating the protection of purely political rights by the provisions of the civil rights laws, see *Ex parte* Yarborough, 110 U. S. 653; United States v. Waddell, 112 U. S. 76; State v. Lancaster, 44 Fed. Rep. 896. Compare United States v. Sanges, 48 Fed. Rep. 78.

WM. L. MURFREE, JR.

HUMORS OF THE LAW.

An elderly judge is reported as opposed to being laid on the shelf, though he does not object to being retained on the bench.

A jailor had received strict orders not to keep any prisoners in solitary confinement. Once, when he had but two in charge, one escaped, and he was obliged, in consequence, to kick the other out-of-doors, to comply with the regulation.

Magistrate.—"You are charged with having emptied a basin of water over the plaintiff.

Irishwoman.—"Shure, your honor, he must forgive me; in the dark I took the gentleman for my husband."

A celebrated lawyer said that the three most troublesome clients he ever had were a young lady who wanted to be married, a married woman who wanted a divorce, and an old maid who didn't know what she wanted.

"What is this man charged with?" asked the magistrate.

"With whisky, your worship," replied the sententious policeman.

The law can never make a man honest; it can only make him very uncomfortable when he is dishonest.

"Excuse the liberty I take," as the convict remarked when he escaped from the State-prison.

At a trial of a criminal case, the prisoner entered a plea of "not guilty," when one of the jurymen at once stood up. The judge informed him that he could not leave until this case was tried. "Tried!" repeated the juror, in astonishment. "Why, he confessed that he is not guilty."

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ACCIDENT INSURANCE.—One cannot, under an accident, policy, recover as for the loss of a foot, where, by reason of an injury to his back, he is deprived of use of his leg, except when wearing an artificial support for his body.—STEVER V. PEOPLE'S MUT. ACC. INS. ASS'N. OF PITTSBURGH, Penn., 24 Atl. Rep. 662.

2. ACCOUNTING BY EXECUTORS.—An executor having insured property which was the security for his debt to the estate, pursuant to an order requiring him to do so at his own expense or file a bond, the estate is not chargeable with the cost thereof.—IN RE GOOD'S ESTATE, Penn., 24 Atl. Rep. 623.

3. ADMINISTRATION — Interest.—Where an executor, instead of investing a certain sum in first mortgages for the benefit of the testator's widow during her life, as directed by the will, retained a debt due from himself to the estate for the purchase price of land of which the legal title had not been conveyed to him by the testator, and paid her the interest on such debt, he is not accountable to the estate for interest on such debt.—IN RE GOOD'S ESTATE, Penn., 24 Atl. Rep. 624.

4. ADMINISTRATORS—Rents.—A Missouri administrator is not chargeable as administrator for rents collected by him from land of the intestate in Illinois, where such rents accrued after the intestate's death, in the absence of any proof that the laws of Illinois gave him as administrator any power to collect such rents.—MCPIKE V. MCPIKE, Mo., 20 S. W. Rep. 12.

5. ADVERSE POSSESSION.—Occupancy of another's land, in the belief that it is unclaimed land belonging to the States does not constitute adverse possession.—SCHLEICHER V. GATLIN, Tex., 20 S. W. Rep. 120.

6. ALTERATION OF INSTRUMENTS.—The insertion of the words "or order" after the name of the payee in a note, without the consent of the maker, constitutes a material alteration which avoids the note.—TAYLOR V. MOORE, Tex., 20 S. W. Rep. 53.

7. ALTERATION OF INSTRUMENTS.—Where the payee in a note in good faith adds to his name therein "& Bro.," thinking that a proper way of transferring the note to a firm consisting of himself and brother, and later restores the note to its original form, such alteration, if not prejudicial to the rights of any person, does not preclude a recovery on the note.—SKELTON V. TILLMAN, Tex., 20 S. W. Rep. 71.

8. APPEALS AND APPELLATE PRACTICE—Abstract.—A motion to dismiss an appeal for failure to file a complete abstract, as required by the rules of court, will not be considered where the motion does not point out in what respect the abstract is insufficient.—GARRETT V. KANSAS CITY COAL MIN. CO., Mo., 20 S. W. Rep. 25.

9. ARREST.—Gen. St. § 836, authorizing a justice to arrest any person who, in his view, engages in disorderly conduct, etc., does not limit the officer to cases in which he acquires his knowledge of the disorder by seeing it, to the exclusion of cases where he hears it.—STATE V. WILLIAMS, S. Car., 15 S. E. Rep. 554.

10. ASSIGNMENT FOR BENEFIT OF CREDITORS.—The fact that a purchaser of a farm from an assignee for the benefit of creditors resells it at an advance is no reason for surcharging the assignee with that amount, it appearing that he acted with prudence, and endeavored to get the best possible price, selling it at private sale at an advance on a bid that was made at a public sale at which it was offered.—IN RE BRENEMAN'S ESTATE, Penn., 24 Atl. Rep. 633.

11. BOUNDARIES—Declarations.—In a dispute as to the boundary line between adjoining proprietors, testimony that a former owner of the elder survey, who was one of the original surveyors of the tract and helped to locate the corners, and who has since died, pointed out to witness a certain place as a corner, is admissible.—BEAL v. ASBERRY, Tex., 20 S. W. Rep. 115.

12. CHATTEL MORTGAGES—Priorities.—A *bona fide* purchaser of a negotiable note, and the chattel mortgage securing it, for value before maturity, who received the mortgage at the same time the note was sold, without knowledge of the existence of a prior mortgage, is not charged with any of the equities existing between the original mortgagor and mortgagee; and a notice of the prior mortgage appearing on the record, but unrenewed as required by law, is not effective as notice to him, and his mortgage has priority.—GRAHAM v. BLINN, Wyoming, 30 Pac. Rep. 446.

13. CHINESE EXCLUSION.—The provision of section 4 of the act of May 5, 1892, that all Chinese persons convicted of being unlawfully in the United States shall be imprisoned at hard labor for a period of not over a year, and thereafter removed from the country, does not, because of this "infamous punishment," render it necessary, under the constitution, to proceed by indictment against all Chinese persons arrested under the act; for it is the evident intent of congress that Chinese shall be removed by summary proceedings as heretofore, and to give effect to all the provisions of the act it should be construed as requiring criminal prosecutions only in cases in which the government is able to procure evidence to justify the same.—UNITED STATES v. WONG SING, U. S. D. C. (Wash.), 51 Fed. Rep. 79.

14. CONFLICT OF LAWS — Execution of Contract.—A bond for the purchase money of land in Delaware, signed and sealed in Pennsylvania by a married woman, and delivered in Delaware by her husband as her agent, is enforceable in Pennsylvania, according to the laws of Delaware, under which a married woman is personally liable on such bond, because the bond was not only to be performed, but was also executed, in that State; the place where a contract is executed being determinable from the place where it is delivered, regardless of where it is prepared and signed.—BAUM v. BIRCHALL, Penn., 24 Atl. Rep. 620.

15. CONSTITUTIONAL LAW—Attorney's Fee.—The provision of Rev. St. 1889, § 2613, for an attorney's fee as costs in favor of plaintiff in a suit for injury to stock resulting from the failure of a railroad company to fence its track, is a valid exercise of the police power.—BRIGGS v. ST. LOUIS & S. F. RY. CO., Mo., 20 S. W. Rep. 32.

16. CONTRACTS—Sales.—A written contract certifying that defendant "hereby sells and agrees to deliver" to plaintiffs, at their warehouse, all the grain harvested or to be harvested during the season by defendant on certain land, "wheat sacked in good merchantable sacks," plaintiffs to pay a certain amount per bushel sacked, is merely executory, and does not vest title in plaintiffs; so that, for refusal of defendant to deliver part thereof, plaintiffs may sue for damages, but not for possession of the property.—HAMILTON v. GORDEN, Oreg., 30 Pac. Rep. 495.

17. CORPORATION—Authority of President.—The president of a land company signed a contract for the purchase of certain lands without authority from the board of directors or the charter of the company, but the purchase was reported to the company, and it accepted the same, capitalized the land, laid off lots, sold part of its stock, ratified the act of the president in selling part of the land, offered the rest for sale, and agreed to issue and sell its bonds to pay for the land: Held a ratification of the purchase, though the minutes of the company showing these facts were not signed.—WEST SALEM LAND CO. v. MONTGOMERY LAND CO., Va., 15 S. E. Rep. 524.

18. CORPORATIONS — Directors —Directors, who are also officers, of a manufacturing corporation, if acting in positive good faith to the corporation and their co-stockholders, are not precluded from engaging in the building and operation of other distinct works in the same general business (here the manufacturer of plate glass), and they do not stand, in respect to said works, in any trust relation to the corporation.—BARR v. PITTSBURGH PLATE GLASS CO., U. S. C. C., (Penn.), 51 Fed. Rep. 33.

19. CORPORATION—Power of "General Manager."—On the question whether the "general manager" of a land company was, by implication, authorized to indorse a note payable to the company, there being a president and vice-president vested with that power by the by-laws, it appeared that he drew checks for the company, and had previously indorsed and negotiated two notes for the company aggregating less than $500, which transactions were entered on the books of the company, and that no objection was made thereto by the board, though their attention was not specially drawn to them, and it did not appear that they were informed thereof before the transaction in question: Held insufficient to show implied authority to indorse.—DAVIS v. ROCKINGHAM INVESTMENT CO., Va., 15 S. E. Rep. 547.

20. CORPORATIONS — Shareholders—Inspection of Books.—In the United States, a shareholder in a corporation has the right, under proper safeguards, to inspect the books of the concern, unless the charter or by-laws otherwise provide.—RANGER v. CHAMPION COTTON-PRESS CO., U. S. C. C. (S. Car.), 51 Fed. Rep. 61.

21. COUNTIES—Injunction.—Under Const. art. 11, § 10, providing that no counties shall create any debts or liabilities which singly or in the aggregate exceed $5,000, when a county has debts to that amount, voluntarily created, a tax-payer may obtain an injunction restraining the creation of further indebtedness.—WORMINGTON v. PIERCE, Oreg., 30 Pac. Rep. 450.

22. COURTS — Jurisdiction.—An action to enforce a vendor's lien does not involve the title to real estate, with the meaning of Act March 2, 1874, creating the court of common pleas, and giving it jurisdiction in all civil actions except where the title to real estate is involved.—BAILEY v. WINN, Mo., 20 S. W. Rep. 21.

23. CREDITOR'S BILL — Dissolved Corporations.—Where, in consequence of the dissolution of a corporation, no action at law can be maintained against it by creditors at large for the recovery of judgments, they may maintain a creditor's bill unsupported by judgments, to reach the assets of the company in the hands of third persons.—PULLMAN v. STEBBINS, U. S. C. C. (Mont.), 51 Fed. Rep. 10.

24. CRIMINAL EVIDENCE — Dying Declarations.—Deceased, when shot, during the afternoon, stated to his wife, "It is a death shot this time," and that he wanted to go to heaven when he died, but did not expressly say he believed he was going to die. Deceased then stated to others that defendant shot him, and the circumstances of the shooting, but did not say anything about dying. Deceased died the following night: Held, that his statements were properly received as dying declarations.—HALL v. COMMONWEALTH, Va., 15 S. E. Rep. 517.

25. CRIMINAL LAW—Accomplice—Instructions.—Where an accomplice has testified for the State, it is error to refuse to instruct the jury that such testimony, "when not corroborated by the testimony of others not implicated in the crime as to matters material to the issue, ought to be received with great caution."—STATE v. WOOLARD, Mo., 20 S. W. Rep. 27.

26. CRIMINAL LAW — Assault.—An indictment for an attempt to commit murder is insufficient where it merely charges that defendant made an assault with a knife upon a person named, with intent him to kill, willfully, feloniously, and of his malice aforethought, without disclosing the character of the knife, or averring that he struck him with it or inflicted any wound having a tendency to produce death.—UNITED STATES v. BARNABY, U. S. C. C. (Mont.), 51 Fed. Rep. 20.

27. CRIMINAL LAW— Burglary. — A storage room, included under the same roof and connected by a porch

on each side with a room in which the owner lives, though without internal communication with such room, is a part of a dwelling, within Rev. St. 1889, § 3525, declaring that no building shall be deemed a dwelling, or a part thereof, so as to be the subject of burglary, unless the same be joined to or immediately connected therewith.— STATE v. HUTCHISON, Mo., 20 S. W. Rep. 34.

28. CRIMINAL LAW—Forgery. — Rev. St. § 3634, which provides that every person who shall sell, exchange, or deliver, for any consideration, any forged instrument, knowing the same to be forged, "with intent to have the same altered or passed," shall be adjudged guilty of forgery in the second degree, applies to a case where a person to whom the forged instrument was sold was ignorant of the forgery, and merely intended to pass it believing it to be genuine.—STATE v. PATTERSON, Mo., 20 S. W. Rep. 9.

29. CRIMINAL LAW—Sentence.—In a criminal case sentence may be pronounced at a term subsequent to that at which the verdict was rendered, if in the meanwhile the case has been regularly continued from term to term.—CLANTON v. STATE, Ala., 11 South. Rep. 299.

30. CRIMINAL TRIAL—Bail. — Bail should be refused whenever, on the evidence adduced, a trial judge would sustain the verdict of a jury pronouncing accused guilty, and imposing the punishment of death.—EX PARTE RICHARDSON, Ala., 11 South. Rep. 316.

31. DEATH BY WRONGFUL ACT—Damages.—The damages recoverable under Rev. St. art. 2899, limiting recovery on account of injuries causing the death of a person to actual damages, are purely pecuniary and compensatory; and a husband suing thereunder for the death of his wife can recover nothing for grief or loss of society; nor does the doctrine of nominal damages apply.—MCGOWN v. INTERNATIONAL & G. N. R. CO., Tex., 20 S. W. Rep. 80.

32. DEED—Construction.— Where the granting clause of a deed conveys property to children in trust for the sole benefit of their mother, while in the *habendum* it is declared to be "in trust for her and themselves," meaning the children named as trustees, the rule in Shelley's Case does not apply, and the mother takes a fee-simple estate.—MOORE v. CITY OF WACO, Tex., 20 S. W. Rep. 61.

33. DEEDS— Delivery.—A grantor, with the expressed intention to convey land, during her life-time duly executed certain conveyances thereof, reserving the possession and rents for her life, and, the grantees being at the time absent, gave the deeds for the grantees unconditionally to a third person, who did not record them, but kept them till after the grantor's death, when she delivered them to the grantees, and they were recorded, she understanding that this was the grantor's wish and intention: Held, that the delivery of the deeds to the third person was absolute, and, the contingency upon which the second delivery was to take place being certain, she held the deeds as trustee for the grantees' benefit, and the second delivery related back to the first, and was a good delivery in the life-time of the grantor. — WILLIAMS v. LATHAM, Mo., 20 S. W. Rep. 99.

34. DEED—Description.— If the description given of a tract of land, taken as a whole, informs the public what property is covered by it, without stating the township or other legal subdivisions, it will be sufficient; as, for instance, where it is described as being on a particular stream in a designated parish, adjoining certain named properties, or upon the stream upon which it is situated within the parish designated, with the number of acres it contains, and reference made to the conveyance by which the vendor acquired it.—BRYAN v. WISNER, La., 11 South. Rep. 290.

35. DEEDS—Effect.—An owner of real estate is bound by a reservation in a deed which forms part of the chain of title under which he holds, though he expressly declines to claim under such deed. — WACO BRIDGE CO. v. CITY OF WACO, Tex., 20 S. W. Rep. 137.

36. DEED—Trust —Acknowledgment.— The trustee in a deed of trust, being a party thereto, is incompetent to take an acknowledgment of the deed.—ROTHSCHILD v. DOUGHER, Tex., 20 S. W. Rep. 142.

37. DESCENT AND DISTRIBUTION— Rents.— Rents accruing from the lands of intestate after his death belong to his heirs; so, in an action therefor by the heirs against one who has collected them, it is no defense that the estate of deceased is indebted to her.—BAKES REASE, Pa., 24 Atl. Rep. 634.

38. DOWER— Assignment.— Possession by a widow of the mansion house of her husband, and her unassigned right of dower, do not prevent the heir from being seised of the property so that his widow should acquire dower therein.—NULL v. HOWELL, Mo., 20 S. W. Rep. 24.

39. EMINENT DOMAIN— Exercise. — The necessity and expediency of exercise the right of eminent domain are questions essentially political, and not judicial, in their nature; and the grant by the legislature to Kansas City of this right carried with it also the power to determine the necessity for its exercise; and action taken by the proper corporate board or tribunal for a contemplated public use is conclusive on the court.—SIMPSON v. CITY OF KANSAS CITY, Mo., 20 S. W. Rep. 38.

40. EMINENT DOMAIN— Compensation.—The opening of a road through an inclosed tract of land partly owned and partly licensed by plaintiff does not entitle him to compensation for the erection of a new line of fence and a water tank necessitated thereby, when such road was established before plaintiff acquired a license to use the land on which said fence and tank were built, and before he inclosed the entire tract — DULANEY v. NOLAN COUNTY, Tex., 20 S. W. Rep. 70.

41. EVIDENCE—Account Books.— An account book of original entries, shown to have been accurately kept and written up each day, is admissible in evidence in favor of the party by whom it is kept.—ROBINSON v. SMITH, Mo., 20 S. W. Rep. 29.

42. EXECUTION LIEN — Unrecorded Deed.— Where an execution creditor is ignorant, at the time of levy, of a prior unrecorded deed of the real estate levied on, a purchaser at sale under such execution, though knowing of the deed at the time of purchase, is not affected thereby, and need not show that he is a purchaser for value.—BLUM v. SCHWARTZ, Tex., 20 S. W. Rep. 54.

43. EXECUTION—Wrongful Levy.—A sheriff is personally liable for a wrongful seizure and sale under execution, though he was given, under Hill's Code, § 289, a bond conditioned to pay both him and the claimant all damages sustained in consequence thereof.—HOWARD v. CONDE, Oreg., 30 Pac. Rep. 454.

44. FRAUDS, STATUTE OF— Authority of Agent.—Inasmuch as an agent's authority to execute a promissory note in the name of his principal need not be in writing, the authority to renew or extend such note by a new promise need not be in writing, but may be created verbally, and proved by parol evidence.—FOSTER v. COCHRAN, Ga., 15 S. E. Rep. 551.

45. FRAUDULENT CONVEYANCE.—A mortgage, authorizing a sale of a stock of goods by a trustee for the benefit of creditors, "either at wholesale, retail, or in job lots, and in either or all of said ways, so as to realize the money therefor in the speediest way consistent with the interest of all concerned," is not invalid, as hindering and delaying creditors by providing only for private sales, as it permits either public or private sales.—SIMON v. MCDONALD, Tex., 20 S. W. Rep. 52.

46. HABEAS CORPUS— Jurisdiction.— Where, on trial of a petition for writ of *habeas corpus*, the proceedings of a justice court were attacked by a petitioner for want of jurisdiction, and the record of such proceedings, introduced in evidence, recited facts giving such court jurisdiction, such facts could not be contradicted by parol testimony. — EX PARTEE DAVIS, Ala., 11 South. Rep. 308.

47. HIGHWAYS—Establishment.—The mere signing of of a petition for the improvement of a road, under chapter 214, Sess. Laws 1887, paragraph 5521, Gen. St. 1889, will not estop a land-owner, who neverpresented, the petition and never knew that it was fatal-

ly defective when presented or until after all the work was completed, from alleging that a board of county commissioners had no authority to authorize the improvement, or cause assessments to be made therefor, when such improvement was made in a manner different from that which the petition requested, and in violation of the provisions of the statute.—BOARD OF COM'RS OF WYANDOTTE COUNTY v. BROWNE, Kan., 30 Pac. Rep. 483.

48. HOMESTEAD — Abandonment. — Where property was not occupied as a residence or for business purposes at the time of an execution sale, any homestead rights previously existing thereon were abandoned.—WILSON v. SWASEY, Tex., 20 S. W. Rep. 48.

49. HOMESTEAD — Acquisition. — Defendant sold his old homestead, and occupied other premises as his home, with a continuing intention to make the land in dispute his home by a purchase which he effected: Held, that defendant's homestead right vested simultaneously with his acquisition of the property, and was not subject to a prior judgment lien.—FREIBERG v. WALZEM, Tex., 20 S. W. Rep. 60.

50. HOMESTEADS—Wife's Joinder.—Under Laws 1873, p. 16, providing that, after the filing of homestead claim by the wife to homestead property standing in the name of the husband, he shall be debarred from selling, mortgaging, etc., the homestead, the husband may, until such filing of notice, mortgage the homestead without the wife's joining.—TUCKER v. WELLS, Mo., 20 S. W. Rep. 114.

51. HUSBAND AND WIFE—Wife's Power.—A wife has no implied authority to bind her husband to pay for medical treatment of his farm hand.—BAKER v. WITTEN, Oklahoma, 30 Pac. Rep. 491.

52. INJUNCTION—Parties.—In an action for an injunction to perpetually enjoin a city and its officers and certain county officers from levying or collecting any taxes to pay interest on certain city bonds, and to have the bonds declared null and void, *held*, that the bondholders are necessary parties, and that the action cannot be maintained without also making them parties. —CITY OF ANTHONY v. STATE, Kan., 30 Pac. Rep. 488.

53. INJUNCTION — Void Judgment. — A sale under a judgment in an action to enforce a mechanic's lien will not be enjoined on the ground that it is void for want of jurisdiction, as appears from facts necessarily matters of record in the lien case, as in such case plaintiff cannot be injured by the sale.—RUSSELL v. INTERSTATE LUMBER CO., Mo., 20 S. W. Rep. 26.

54. INSURANCE—Evidence.—Evidence that assured at the time his stock of goods was burned was doing a losing business is too remote for the purpose of establishing fraud on his part in making false statements as to the amount of goods on hand at the time of the fire.—MORLEY v. LIVERPOOL, LONDON & GLOBE INS. CO., Mich., 52 N. W. Rep. 939.

55. INTOXICATING LIQUORS—Sales by Employee.—Rev. St. § 4589, providing that a sale of intoxicating liquor to a minor by a clerk or agent shall be deemed the act of the principal, establishes merely a *prima facie* rule of evidence and where it appears that a clerk made the sale in defendant's absence, defendants may prove by themselves and the clerk that the sale was without their consent, and contrary to their express orders.—STATE v. WEBER, Mo., 20 S. W. Rep. 33.

56. JUDGMENT—Collateral Attack.—A decree foreclosing a chattel mortgage cannot be collaterally attacked in replevin by the mortgagor's assignee for the benefit of creditors, on the ground that the mortgage was in fraud of creditors.—FINLEY v. HOUSER, Oreg., 30 Pac. Rep. 494.

57. JUDGMENT—Entry.—Where a judgment entry states the judgment to be against defendants, without naming them, their names are to be ascertained not only by looking to the caption of the entry, but also by reference to the pleadings, and the process with the returns thereon.—BOLLING v. SPILLER, Ala., 11 South. Rep. 300.

58. LANDLORD AND TENANT—Insolvency.—Where one erects a building for a manufacturing concern, which verbally agrees to rent it at a certain rental for a term of years, and a lease is made pursuant to such agreement on the insolvency and assignment of the lessee, and its consequent failure to pay rent, the lessor has a present cause of action for damages sustained by breach of the original contract, which entitles him to share in the distribution of the fund in the hands of the assignee.—IN RE READING IRON WORKS, Penn., 24 Atl. Rep. 617.

59. LANDLORD AND TENANT—Lien for Rent.—The landlord's lien for rent on the tenant's crops, provided by Act 1885 (19 St. at Large, 146), attaches to all the crops of the tenants on the premises, though the tenant agreed to set apart for the rent a specific portion of the crops.—STATE v. REEDER, S. Car., 15 S. E. Rep. 534.

60. LIBEL—Premature Filing of Mechanic's Lien —Under Code, §§ 2475-2477, providing that a subcontractor shall not be entitled to a lien on the work in hand until its completion, a subcontratcor who prematurely files a mechanic's lien on the work in hand is liable in an action on the case for libel for the injury occasioned thereby to the contractor.—MOORE v. ROLIN, Va., 15 S. E. Rep. 520.

61. LIFE INSURANCE—Suicide.—A clause in a life insurance policy avoiding it if death result from suicide (sane or insane), includes self destruction irrespective of the assured's mental condition at the time of the act, and the court, in an action on the policy, will not attempt to measure the degree of insanity.—BILLINGS v. ACCIDENT INS. CO. OF NORTH AMERICA, Vt., 24 Atl. Rep. 656.

62. LIMITATION OF ACTIONS.—Pasch. Dig. art. 4603, deferring the running of the statute of limitations "if during coverture a sale of the lands of the wife be illegally effected," does not apply to a case where a deed is void as not having been properly acknowledged by the wife.—HARRIS v. WELLS, Tex., 20 S. W. Rep. 68.

63. MANDAMUS—Demand. — In a proceeding of *mandamus* to compel the performance of a public duty, no formal demand upon the defendants is necessary where their course and conduct manifest a settled purpose not to perform the duty, and where it clearly appears that a formal demand would be useless and unavailing.—CHICAGO, K. & W. R. CO. v. HARRIS, Kan., 30 Pac. Rep. 456.

64. MANDAMUS—Territorial Courts.—The organic act of the territory of Oklahoma, conferring upon the territorial courts chancery as well as common-law jurisdiction, and conferring upon them the right to issue writs of *mandamus* in all cases authorized by law, allows the issue of a writ to compel town site trustees to execute a deed for a lot to one of several contestants, whom they have decided is entitled to a deed, and from whom the deed is withheld out of deference merely to the instructions of the secretary of the interior that the parties are entitled to an appeal from said decision. —MCDAID v. TERRITORY, Oklahoma, 30 Pac. Rep. 438.

65. MANDAMUS TO SECRETARY OF STATE.— The supreme court, under the power given it by Const. art. 6, § 3, to issue writs of *mandamus*, and hear and determine the same, has jurisdiction of a suit to restrain the secretary of State from giving notice of the election of senators under the last senatorial apportionment act, 1891, and to compel him to give notice under a former act, on the ground that the last act is in violation of Const. art. 4, § 2.—GIDDINGS v. BLACKER, Mich., 52 N. W. Rep. 944.

66. MASTER AND SERVANT — Assumption of Risk. — Where a workman is employed to do certain work with a machine which he fully understands, though it may not be of the newest pattern, and may require more care than newer patterns, but nevertheless is in perfect order of its kind, he takes the risk of all accidents which may befall him in its use. — THE SERAPIS, U. S. C. C. of App., 51 Fed. Rep. 91.

67. MASTER AND SERVANT— Negligence—Pleadings.— A petition in an action against a railroad company for personal injury growing out of the alleged negli-

gence of the servants of the company must show to which servant or servants of the company negligence is imputed, and fully and definitely state what acts or omissions of such servants constitute the negligence complained of.—ATCHISON, T. & S. F. R. CO v. O'NEILL, Kan., 30 Pac. Rep. 470.

68. MECHANIC'S LIEN.—One who, under contract with the owner of land, furnishes a windmill and other material, and erects the same thereon, is entitled to a lien on said land for said improvement, by complying with the provisions of the mechanic's lien law.—PHELPS & BIGELOW WINDMILL CO. v. BAKER, Kan., 30 Pac. Rep. 472.

69. MECHANIC'S LIEN — Assignment. — A mechanic's lien on a railroad will not lie in favor of an assignee where the claim has been assigned before the account was filed in the office of the circuit court.—O'CONNOR v. CURRENT RIVER R. CO., Mo., 20 S. W. Rep. 16.

70. MINING COMPANIES—Validity of Mortgage.—Comp. St. Mont. div. 5, § 5, 492, provides that the officers of a mining company shall not mortgage its property, except in pursuance of an order of a stockholders' meeting convened by publication of notice, etc.: Held, that a mortgage executed by the unanimous order of a stockholders' meeting of such company, at which all of the stockholders were present, but which was convened without observing the statutory requirements, was not void, but voidable only.—CAMPBELL v. ARGENTA GOLD & SILVER MIN. CO., U. S. C. C. (Mont.), 51 Fed. Rep. 1.

71. MORTGAGES — Foreclosure.—A mortgage of real property to trustees named therein in trust to pay debts due from or assumed by the mortgagor, upon sufficient consideration, is a valid trust, and may be enforced by the trustees in their own names without joining the *cestui que trust*.—MOULTON v. HASKELL, Minn., 52 N. W. Rep. 960.

72. MUNICIPAL CORPORATIONS—De Facto Marshal.—When, by reason of failure to hold an annual charter election, the members of the municipal government of an incorporated town, including the marshal, continue to hold their offices and exercise the powers incident thereto during the year succeeding that for which they were elected or appointed, they are officers *de facto*, if not *de jure*, and are under the same protection of law in the exercise of their functions as if there had been no failure to comply with the charter, and they had been duly re-elected or appointed.—GARRETT v. STATE, Ga., 15 S. E. Rep. 533.

73. MUNICIPAL CORPORATION—Occupation Tax.—The grant of a license under a city charter authorizing a butcher to vend meats on his premises is not an official permit to carry on a business forbidden by the State unless a license is first obtained; and since the charter does not in terms provide for the exaction of a license fee, but provides for the enforcement of all public regulations by fine and imprisonment, a sum of money demanded and received under such license was so demanded and received under the city's authority to levy and collect occupation taxes.—HOEFLING v. CITY OF SAN ANTONIO, Tex., 20 S. W. Rep. 85.

74. MUNICIPAL CORPORATIONS—Occupation Tax.—Under Const. art. 8, § 1, providing that the occupation tax levied by any city shall not exceed one-half of the tax levied by the State on the same profession or business, a city cannot impose a license for revenue on an occupation or business until the legislature has declared that such occupation or business shall be taxed, and has fixed the amount of the tax thereon.—CITY OF LAREDO v. LOURY, Tex., 20 S. W. Rep. 89.

75. MUNICIPAL CORPORATIONS — Street.—Act May 16, 1891, which authorizes municipal corporations to widen streets upon the petition of a majority of the owners of abutting property, does not repeal by implication Act April 3, 1851, which authorizes borough councils, of their own motion, to pass ordinances for widening streets.—IN RE FREDERICK ST., Penn., 24 Atl. Rep. 669.

76. MUNICIPAL CORPORATION—Street Improvements.—Under the charter of the city of El Paso, § 130, giving power to make street improvements, "provided the city council shall pay one-third and the owners of the property two-thirds thereof," as it does not appear what property owners are to pay "two-thirds thereof," an assessment for such improvements on the owners of abutting property cannot be sustained.—CITY OF EL PASO v. MUNDY, Tex., 20 S. W. Rep. 140.

77. MUNICIPAL CORPORATIONS—Trustees.—In the absence of an express grant of power a municipal corporation cannot accept and hold property upon a purely private trust.—IN RE FRANKLIN'S ETSATE, Penn., 24 Atl. Rep. 626.

78. NEGOTIABLE INSTRUMENTS.—A note dated "Hayneville, Ala.," and made payable "at H's office," which office was in said town, comes within the purview of Code, § 1756, providing that promissory notes payable "at a certain place of payment therein designated, are governed by the commercial law," and a purchaser of such note before maturity, for value, and without notice, takes it free from the equities between the original parties.—RUDOLPH v. BREWER, Ala., 11 South. Rep. 314.

79. NEGOTIABLE INSTRUMENTS.—Where a note is transferred by indorsement, the transferee may maintain action thereon, though he holds it as security for a debt of less amount than the note. — JACKSON v. FAWLKES, Tex., 20 S. W. Rep. 136.

80. PARTNERSHIP.—Defendants agreed to furnish C with $3,000, from time to time, as he might require it, to be used in his business, and secured by a chattel mortgage on the tools and machinery therein. They were to receive a share of the profits during the time C retained said money, but he was to be allowed to repay it at the end of five years or sooner, at his option. The control of the business was left in C's hands, and the agreement expressly provided that nothing therein contained should be construed to create a partnership except as to the profits: Held that, according to the law of New York, said agreement did not constitute the parties partners as to creditors.—FIRST NAT. BANK OF WAVERLY v. HALL, Penn., 24 Atl. Rep. 665.

81. PAYMENT—Appropriation. — A creditor to whom money is paid by his debtor, without designating on what account to apply it, may apply half the amount paid on each of two debts where neither debt is barred by the statute of limitations.—BECK v. HAAS, Mo., 20 S. W. Rep. 19.

82. PRACTICE.—An attorney having charge of a case in court should be present when the same is assigned for trial, unless a stipulation to hear it some other day has, with the approval of the court, been agreed upon by the respective parties.—WEEMS v. MCDAVITT, Kan., 30 Pac. Rep. 481.

83. PRINCIPAL AND SURETY—Release of Surety.—The fact that a person who has been elected cashier of a bank, and who has given bond for the faithful performance of his duties as such, afterwards undertakes for an added compensation, to keep the book known as the "individual ledger," does not effect such a change in his duties as to discharge the surety in case of embezzlement.—SHACKAMAXON BANK v. YARD, Penn., 24 Atl. Rep. 635.

84. PROCESS—Service—Privilege.—Under Rev. St. 1889 § 2009, providing that a resident of the State may be served with process in any county in which he may be "found," one who is attending court in a county other than that of his residence, as a party or witness, may be served with summons in another action brought against him; the common law rule that a party is protected from any civil process while attending court applying only to arrest in civil cases.—CHRISTIAN v. WILLIAMS, Mo., 20 S. W. Rep. 96.

85. PROCESS—Service—Removal of Cause.—Where defendants enter a special appearance in the State court for the purpose of contesting the validity of service, and subsequently remove the cause to a federal court, such removal, even though it should be considered as equivalent to a general appearance, does not preclude

the court from examing the legality of the original services for, while a general appearance is a waiver of mere irregularities of service, the court may at any time dismiss the case for any illegality rendering the service void.—MORRIS v. GRAHAM, U. S. C. C. (Fla.), 51 Fed. Rep. 53.

86. PUBLIC LANDS.—One who incloses public land by a fence built entirely on his own land is guilty of a violation of 23 U. S. St. at Large, p. 321, forbidding the inclosure of public land.—UNITED STATES v. BUFORD, Utah, 30 Pac. Rep. 433.

87. PUBLIC LANDS—Homestead.—A person who takes possession of the land under a lease from one claiming through such survey, believing in the good title of his lessor, but who afterwards discovers that the land is vacant may repudiate his contract of lease without quitting possession, and proceed to pre-empt the land. —SWEETMAN v. SANDERS, Tex., 20 S. W. Rep. 124.

88. RAILROAD COMPANIES—Negligence.—A brakeman, while coupling flat cars, was injured by reason of there being insufficient room between the end of one car and the lumber on the other car, which was so loaded as to project beyond the end of the car: Held that, it being the duty of the company to furnish a safe place for coupling, it was not excused by having furnished an inspector; his negligence not being that of a fellow-servant.—DEWEY v. DETROIT, G. H. & M. RY. CO., Mich., 52 N. W. Rep. 942.

89. RAILROAD COMPANIES — Negligence.—Failure to sound the bell or whistle when a train approaches a crossing will not relieve the driver of a team from the exercise of care in discovering its approach; he having just seen it moving slowly in that direction at the next crossing.—MO. PAC. RY. CO. v. PEAY, Tex., 20 S. W. Rep. 57.

90. RAILROAD COMPANIES—Negligence.—It is the duty of a cable railway company in supplying grips and brakes and in keeping them in repair, to anticipate all such weather and conditions of track as might reasonably be expected in such a climate.—SHARP v. KANSAS CITY CABLE RY. CO., Mo., 20 S. W. Rep. 93.

91. RAILROAD COMPANIES—Negligence.—When a railroad train is run against a man upon the track, while the engineer is engaged in a criminal violation of a public law by not checking the speed of the train in approaching a public crossing, it is not true as a matter of law that the engineer has a right to assume, on first seeing the man on the track, that he would get off in time to save himself, and act on that assumption until he discovered, too late to check the train effectually, that the man was not attentive to the danger which threatened him.—GEORGIA RAILROAD & BANKING CO. v. DANIEL, Ga., 15 S. E. Rep. 538.

92. RAILROAD COMPANIES—Negligence.—Where a person has full knowledge that from 10 to 20 railroad trains pass a certain crossing daily, and knows that a certain railroad train which he has just seen a short distance away may at any moment pass such crossing, and where a temporary gust of wind temporarily fills the air with dust, which is not likely to last to exceed four or five minutes, and which to some extent obscures his view, it is negligence for him to attempt to cross the railroad tracks at such crossing on a fast walk, without stopping or looking.—CHICAGO, K. & W. R. CO. v. FISHER, Kan., 30 Pac. Rep. 462.

93. RAILROAD COMPANIES—Negligence.—Where a railroad company is bound to maintain a highway bridge over its tracks, it is liable to one injured by the defective maintenance of the bridge, and such liability is not negatived by the fact that the injured party might have sued the township for failure to keep the highway in repair.—GATES v. PENNSYLVANIA R. CO., Penn., 24 Atl. Rep 638.

94. RAILROAD COMPANIES — Receivers.—In an action against a railroad company for injuries to a passenger on defendant's train, while the road was operated by a receiver, where, after the injury and before suit, the receiver was discharged, and the property returned to defendant, together with all betterments made from earnings during the receivership, defendant, rather than the receiver, is liable for the injury.—TEXAS & PAC. RY. CO. v. BLOOM, Tex., 20 S. W. Rep. 133.

95. RAILROAD COMPANIES — Stock Killing.—The fact that a railroad train was equipped with the most approved appliances, and in charge of a competent engineer, who was unable, after discovering stock on the track, to stop the train in time to save it, does not relieve the company from liability for killing the stock, unless a proper lookout was maintained to discover the stock as soon as possible.—MOBILE & B. RY. CO. v. KIMBROUGH, Ala., 11 South. Rep. 307.

96. RECEIVER—Contract for Transportation.—A railroad company contracted with a marble company to carry marble from T to M, and allow same to be stopped over at N, an intermediate point, to be dressed, and then re-shipped and carried to M without extra charge, the entire charge for freight being paid inadvance: Held, that a receiver appointed in a suit by the bondholders to foreclose a mortgage on the railroad could not be compelled to transport marble from N to M, although the freight had been paid for such transportation before the appointment of the receiver.—CENTRAL TRUST CO. OF NEW YORK v. MARIETTA & N. G. RY. CO., U. S. C. C. (Ga.), 51 Fed. Rep. 15.

97. SALE - Contract. — A memorandum, "Guarantied against our own decline," given by one at the time of making a sale, does not reserve to the purchaser the right to rescind the contract at will.—BUIST v. EUFAULA DRUG CO., Ala., 11 South. Rep. 301.

98. SALE— Stoppage in Transitu.—The consignee of certain goods, being indebted to a bank, authorized the cashier to pay the freight on the said goods, receive possession, and have the dray line haul the same to the consignee's store. The order given by the consignee to the cashier directed the delivery of the goods to the dray line. After presenting the order to the carrier, the cashier requested another person to see the goods delivered to the same line: Held, that this was not a delivery to the consignee; and that attachments, therefor, levied at the instance of other creditors, while the goods were at the station or on the way to the store, were ineffectual to impair the consignor's right of stoppage.— HARRIS v. TENNEY, Tex., 20 S. W. Rep. 82.

99. SALE OF STANDING TIMBER. — Under a contract providing for the sale of standing timber, the purchaser to enter on the land at once, and cut and remove the timber within five years, all remaining on the land after that time to revert and become the property of the seller, title to remain in the seller till all conditions, including payment of purchase-money notes, were fulfilled, timber cut and skidded, but not removed from the land, within the time specified, reverts as well as timber remaining standing, though all other conditions have been fulfilled. — GAMBLE v. GATES, Mich., 52 N. W. Rep. 941.

100. SCHOOL DISTRICTS—Special Tax.—Act May 8, 1854, requires the board of school directors "to cause suitable lots to be purchased, and buildings to be erected, purchased, or rented, for school houses." Section 33 authorizes the levy of a special tax, to be "applied solely to the purpose of purchasing or paying for the ground, and the erection of school buildings thereon:" Held, that levying a special tax for the purpose of paying rent on a building to be used as a school-house is authorized. — HACKETT v. EMPORIUM BOROUGH SCHOOL DIST., Pa., 24 Atl. Rep. 627.

101. TAXATION — Exemption. — Const. art. 10, § 6, and Rev. St. 1889, § 7504, allowing exemption from taxation of a lot "with the buildings thereon," when used for schools, does not include office furniture, nor the furniture of a chemical laboratory, not fastened to the building.— CITY OF KANSAS v. KANSAS CITY MEDICAL COLLEGE, Mo., 20 S. W. Rep. 35.

102. TAXATION — Voluntary Payment. — Where one neither aged nor infirm in intellect, who knows the law, and his rights thereunder, pays an illegal license

because threatened by the village attorney with prosecution for non-payment, the payment is voluntary, and cannot be recovered.—BETTS v. VILLAGE OF READING, Mich., 52 N. W. Rep. 940.

103. TAX TITLE.— Under the tax laws of Washington Territory, taxes due on lands constituted a debt due from the owner, collectible by distraint, and the lands were only subject to sale on failure of the collector to find personal property of the delinquent owner sufficient to produce the amount due: Held, that a tax title under this law was purely derivative, and the tax deed conveyed only such title as was vested in the delinquent. MCDONALD v. HANNAH, U. S. C. C. (Wash.), 51 Fed. Rep. 73.

104. TOWNSHIP — Highways. — Where a hole in the road, and a pile of stones placed on a highway by the town supervisors, rendered the road at that place unsuitable and insufficient for ordinary public traffic, the township is guilty of negligence.—SCHAEFFER v. TOWNSHIP OF JACKSON, Pa., 24 Atl. Rep. 629.

105. TRADE-MARKS—Infringement.—A person seeking protection against an infringement of his label is not required to prove fraud, nor that purchasers have been deceived and have purchased his adversary's goods under the belief that they were his. A sufficient case to entitle him to protection will be made if he shows that the resemblance between the counterfeit and genuine is so close that it is probable purchasers, in buying, will mistake one for the other.—WIRTZ v. EAGLE BOTTLING CO., N. J., 24 Atl. Rep. 658.

106. TRESPASS—Cotenant.—Since plaintiff, being in possession of land as the tenant of one claiming exclusive title, had title to the severed crops, defendant in going upon the land and carrying away the crops, was a trespasser *ab initio*, even if he had title as a tenant in common; his right of entry not entitling him to the grain, which had not then been set apart or divided.—BAKER v. LEWIS, Pa., 24 Atl. Rep. 516.

107. TRESPASS— Damages.— In an action of trespass for tearing down a fence and placing it on plaintiffs' corn, evidence of defendants' malice and ill will, as showing a wanton and aggravated trespass, is admissible for the purpose of enhancing damages.—KENNEDY v. ERDMAN, Pa., 24 Atl. Rep. 643.

108. TRESPASS TO TRY TITLE.—In trespass to try title, the complaint alleged ownership and prior possession in plaintiff, ejectment by defendant, and prayed judgment for title and possession, the cancellation of all deeds or incumbrances thereon held by defendant, and "such other and further relief as may be just and equitable," but no facts were alleged on which an equitable title could be based. Defendant pleaded "not guilty," and filed a cross complaint in trespass to try title: Held that, under the pleadings, no equities between the parties could be tried, and the party holding the superior legal title must prevail. — GROESBECK v. CROW, Tex., 20 S. W. Rep. 49.

109. TRIAL— Limiting Argument. — It is within the discretion of the court to limit the time for addresses of counsel to the jury, and its action in that respect will not be reviewed, unless actual prejudice is shown, or an unwarranted and arbitrary interference with the right of counsel and a palpable abuse of discretion. —HILL v. COLORADO NAT. BANK, Colo., 30 Pac. Rep. 489.

110. USURY.—The payee in a contract providing for usurious interest is not entitled to equitable relief, unless he offers to abate all the interest. — HAWKINS v. PEARSON, Ala., 11 South. Rep. 304.

111. USURY—Building and Loan Association.—In considering the question of usury in a loan from a building and loan association, payments made by the borrower on account of his stock are not to be considered, since such payments are not made for the use of the money borrowed, but in order to acquire an interest in the property of the association. — INTERNATIONAL BLDG. & LOAN ASS'N v. ABBOTT, Tex., 20 S. W. Rep. 118.

112. USURY—Contract.—A national bank, which makes a loan upon a note that embraces usury, and is renewed from time to time, forfeits the entire interest stipulated to be paid, and no portion of the usurious interest included in the renewal note can be recovered.—FIRST NAT. BANK OF MEADE CENTER v. GRIMES, Kan., 30 Pac. Rep. 474.

113 VENDOR AND PURCHASER.—A contract for the sale of land provided that, if the title proved defective beyond repair, the contract should be void, and the pay ment made on account of the purchase price should be returned, and that, if the vendee should not fulfil the contract, such payment should be forfeited. It turned out that the vendor had no title to part of the land. The purchaser sued for specific performance, but the court found that he had refused to allow the contract to be carried out *pro tanto*: Held, that he was nevertheless entitled to judgment for the payment made, with interest and costs.—RYAN v. DUNLAP, Mo., 20 S. W. Rep. 29.

114. VENUE — Action against Corporation. — Under Rev. St. art. 1198, subd. 21, providing that "suits against any private corporation may be commenced in any county in which the cause of action, or a part thereof, arose," where defendant corporation fails to sell produce consigned to it by plaintiff as agreed with him by its agent, an action therefor may be brought in the county in which the agreement was made.—WESTERN WOOL COMMISSION CO. v. HART, Tex., 20 S. W. Rep. 131.

115 WILLS—Ambiguities.—Where a will is ambiguous for want of punctuation, and no extraneous evidence is offered in explanation thereof, the court will insert a punctuation in support of the more plausible reading of the will in connection with its other provisions.—LYCAN v. MILLER, Mo., 20 S. W. Rep. 36.

116. WILL — Construction. — A testator devised his mansion house to his wife for life, and devised all the rest of his property to his eight children, and provided that the mansion house should go, on the death of his wife, to that one of his children who, in the division of his estate, should take the farm to which said mansion house was attached: Held, that title to the remainder estate in said mansion house did not pass under the residuary devise. — DEAN v. WINTON, Pa., 24 Atl. Rep. 664.

117. WILLS — Contract.— A promise in writing by decedent "to let the legacy in her [plaintiff's] favor in my will stand, and remain for her benefit," without any consideration for the promise, is not sufficient to establish a contract enforceable against decedent's estate, where the will referred to was afterwards revoked.—IN RE KING'S ESTATE, Pa., 24 Atl. Rep. 661.

118. WILLS—Capacity. — In a will contest, one who had frequent and friendly intercourse with testator for a number of years, and abundant opportunity to observe his condition and note the changes in it during the last years of his life, may give his opinion of testator's sanity, and such opinion is to be weighed by the jury in connection with the facts on which it is based.—COMMONWEALTH TITLE INSURANCE & TRUST CO. v. GRAY, Pa., 24 Atl. Rep. 640.

119. WILLS—Mental Capacity.—The will of a speechless paralytic, 74 years old, who retained his interest in and knowledge of the details of his business, and whose mind was unimpaired up to the time of his death, is valid where his wishes as to the disposition of his property were communicated by negative and affirmative replies to questions asked him, and, after it had been written, it was read to him item by item, and his assent given by nods of his head.—ROTHROCK v. ROTHROCK, Oreg., 30 Pac. Rep. 453.

120. WITNESS — Transactions with Decedents. — The provision of Code 1886, § 2765, that neither party shall be allowed to testify against the other "as to any transaction with, or statement by, any deceased person whose estate is interested in the result of the suit," does not render plaintiff, in an action to recover the proceeds of a note collected by defendant's intestate, incompetent to testify generally as to "whether she had ever received anything for the said note."—GAMBLE v. WHITEHEAD, Ala., 11 South. Rep. 293.